

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER DAVIS,

Defendant.

Case No. [12-cr-00119-SI-1](#)

**ORDER DENYING GOVERNMENT'S
MOTION TO STAY AND
SCHEDULING § 2255 MOTION FOR
HEARING ON NOVEMBER 4, 2016 AT
11:00 AM**

Re: Dkt. No. 1631

Defendant, a federal prisoner, has filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. 2255 based on the Supreme Court's decision in *Johnson v. United States*, 576 U.S.____, 135 S. Ct. 2551 (2015) ("*Johnson II*"). On January 29, 2013, this Court sentenced defendant for the three counts to which he had plead guilty: (1) Count One: A Racketeering Conspiracy, in violation of 18 U.S.C. § 1962(d); (2) Count Twenty-Eight: Robbery Affecting Interstate Commerce, in violation of 18 U.S.C. § 1951(a); and (3) Count Twenty-Nine: Use/Possession of Firearm in Furtherance of Crime of Violence, in violation of 18 U.S.C. § 924(c). Dkt. No. 1606-1. The Court imposed a total term of imprisonment of 135 months. *Id.* at 2. The term consisted of "51 months on each of Counts One and Twenty-Eight (to run concurrently to each other), and 84 months on Count Twenty-Nine, to run consecutively to Counts One and Twenty-Eight." *Id.* Defendant has been in federal custody since May 24, 2012, and has served over 52 months of his sentence.

Defendant's § 2255 motion contends that his conviction and 84 month sentence for Count Twenty-Nine must be set aside because after *Johnson II*, a Hobbs Act robbery no longer satisfies the "crime of violence" definitions associated with § 924(c). The government has filed a motion

1 to stay due to the Supreme Court's recent grant of certiorari in *Lynch v. Dimaya*, 2016 WL
2 3232911 (Sep. 29, 2016). The government asserts that a stay is in the interest of judicial
3 efficiency because defendant's § 2255 motion relies heavily on the Ninth Circuit's decision in
4 *Dimaya*. *Dimaya* held that the "residual clause" in 18 U.S.C. § 16(b), as incorporated into the
5 Immigration and Nationality Act's ("INA") definition of "aggravated felony," 8 U.S.C.
6 § 1101(a)(43)(F), is unconstitutionally vague in light of the Supreme Court's decision in *Johnson*
7 *II*. *Dimaya*, 803 F.3d at 1120.

8 The Court finds that a stay is not appropriate because defendant could be sentenced to time
9 served if his § 2255 motion is successful. Further, briefing on the § 2255 motion has recently
10 been completed and thus is ready for decision. The Court schedules a hearing for November 4,
11 2016 at 11:00 a.m. on defendant's § 2255 motion.

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13 **IT IS SO ORDERED.**

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15 Dated: October 14, 2016

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SUSAN ILLSTON
United States District Judge